

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8368 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VINODRAI DHIRAJLAL RAVAL

Versus

DAVE OR HIS SUCCESSOR IN OFFICE

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Appearance:

MR PK JANI for Petitioner

MR NV ANJARIA with S.N.Shelat, Senior Advocate  
for respondent nos. 1 and 2.

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 25/11/97

ORAL JUDGEMENT

Dr. Vinodray Dhirajlal Raval, one of the voters in the registered graduates in the Faculty of Medicines has filed the present petition to challenge the orders passed by the respondent nos. 1 and 2 by which his nomination paper has been rejected.

2. The elections of the North Gujarat University Courts are to be held as per the programme declared by the respondent no. 2 on 1.12.1997. The present petitioner had filed his nomination paper for being a member of the Court of the North Gujarat University as one of the candidates for electing member from the registered graduates, Medical Faculty of the said University. As per election programme, the scrutiny of the nomination papers was to take place on 14.11.1997 and accordingly, this scrutiny took place on that day and in the said scrutiny, the nomination paper of the present petitioner was rejected. Against the said rejection, the petitioner made a representation to the Vice Chancellor on 17.11.97. The Vice Chancellor has rejected his representation and confirmed the order of rejecting his nomination paper and hence, the petitioner has come before this Court.

3. The petitioner himself has produced the form of nomination at Annexure "A" to the petition. The column no. 1 of the said nomination form is running as under:

"Name of the Electoral Body and \_\_\_\_\_  
Faculty, if any, to represent \_\_\_\_\_  
which the candidate is nominated \_\_\_\_\_  
(Please see the Note below) Faculty, if any \_\_\_\_\_"

In the said column no. 1 of Nomination Form, the petitioner has written in the blank space only words "Medical Faculty". Admittedly, beside writing these words "Medical Faculty", he had not written any other word in the said column no. 1 of the Nomination Form. If the above quoted Nomination Form is considered, then it would be quite clear that when a person fills any nomination, it is incumbent upon him to write the name of the electoral body for which he was contesting the election. The said column no. 1 further mentions that if there is any faculty, then to write the name. The name of the faculty which has nominated him to be represented for that faculty. Admittedly, the petitioner was contesting the constituency (the electoral body) of registered graduates. The petitioner had not admittedly written in the nomination form the name of constituency-Electoral body. Therefore, when he was seeking the election for the electoral body of registered graduates he ought to have written the same in the nomination form. When a candidate is contesting the election, it is incumbent upon him to write in the

nomination form the constituency for which he was contesting the election. The constituency means the electoral body. As admittedly, the petitioner had not written the constituency in his nomination form, his nomination paper has been rejected.

4. It must be remembered that I am considering the claim of the petitioner under Article 226 of the Constitution of India. I am not considering the claim of the petitioner as an appellate authority. I cannot have an appreciation of evidence and in exercise of powers under Article 226 of the Constitution of India I cannot interfere with the findings recorded by the original authority by appreciating the material on record unless I come to the conclusion that the original authority has capriciously and arbitrarily decided the matter or that the finding of the original authority is a perverse one. If the admitted facts are taken into consideration, it is difficult for me to hold that the rejection of the petitioner's nomination paper is an illegal act or perverse act. The petitioner himself has failed to write in his nomination form the constituency for which he was contesting the election and because of the same, the authority was constrained to reject his nomination paper. By rejecting the nomination form in question, I am unable to hold that the authority has committed any illegality so as to interfere with the same by exercising powers under Article 226 of the Constitution of India.

5. In the instant case, the petitioner has also got an alternative remedy to have an election petition and when such an alternative remedy is available, it is not expected of this Court to interfere with the election programme by exercising powers under Article 226 of the Constitution of India as has been held by the Apex Court in the case of Gujarat University vs. N.V.Rajguru, reported in AIR 1988 SC,66. The Division Bench of this Court in the case of Mahesana District Sales Union vs. State of Gujarat reported in 1988(2) GLH, 149 has taken the same view in election matters. No doubt, the learned advocate for the petitioner has cited before me the case of Vishnubhai K.Thaker vs. District Registrar and Election Officer, Agricultural Produce Market Committee, reported in 1996(2) GLH, 196 and Lajuben Jerambhai Bhil and others vs. Ahmedabad Municipal Corporation and others, reported in 1993(1) GCD, 433. Both these decisions are the decisions of the learned Single Judges of this Court and the decision of the Apex Court in 1988(1) SC,66 is, according to me, applicable on all fours to the facts of the present case

and therefore, I prefer the said decision to that of two Single Judges of this Court. I therefore, hold that the present petition deserves to be rejected. I accordingly reject the same. Notice is discharged. No order as to costs.

(S.D.Pandit,J)

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